IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No.5378 & 9313 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARESHKUMAR VINODBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5378 of 2001

MR RK MISHRA for Petitioner No. 1-13

MR DABHI, Ld. AGP for Respondent No. 1-2

(in both the matters)

..... for Respondent No. 3

MR VD PARGHI for Respondent No. 4

NOTICE SERVED BY DS for Respondent No. 4,6

MR JB PARDIWALA for Respondent No. 5

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 01/02/2003

COMMON ORAL JUDGEMENT

1. Leave to delete Ashram Shala Adhikari.

2. Pursuant to the order dated 17-1-2003 passed by this Court in SCA No.9313/2001, Mr.M.M.Patel, Deputy Director is personally present.

3. Heard Mr.Mishra and Mr.Jasani, learned Counsel for the petitioners, Mr.Dabhi, learned AGP for the State authorities, Mr.Pardiwala, learned Counsel for the District Panchayat, Valsad and Mr.Parghi, learned Counsel for the District Panchayat, Navsari. With the consent of parties the matter is finally heard and decided.

4. Rule. The service of Rule is waived by the respective advocates and AGP of the concerned respondents.

5. Since the facts are inter-connected and common, they are dealt with the following common order.

6. The contention raised on behalf of the petitioners is that they had right of lien over the post of primary teachers and the juniors to the petitioners were given right of lien, whereas the petitioners' right of lien was not accepted and, therefore, the petitioners had to file the petitions being SCAs No.13201/2000 to 13233/2000. The said Special Civil Applications came to be disposed of by this Court (Coram: HK Rathod, J.) by the decision dated 26-12-2000 and as per the reasons recorded, the respondent authority was directed to consider the question of giving right of lien to the petitioners on the basis of the resolution dated 23-8-1973 and the resolution dated 8-12-1999. It is also contended on behalf of the petitioners that thereafter the Secretary, Education Department of the State Government had considered the matter pursuant to the directions given by this Court as per the order dated 18-4-2001 and thereafter ultimately the Commissioner has passed the order dated 18-5-2001, whereby the request of the petitioners has been rejected. It has been submitted on behalf of the petitioners that the State Government considered that on account of the subsequent resolution dated 8-12-1999, the petitioners would not be entitled to the right of lien. It has also been contended by the petitioners that the ground for denial of right of lien by the State Government is that now Vidhya Sahayahs are available, but it has been contended on behalf of the petitioners that the important aspect which was required

to be considered by the State Government was that the juniors to the petitioners have been given right of lien on the basis of the very resolution of the Government and there is no reason to deprive the petitioners of the opportunity. It has also been submitted on behalf of the petitioners that one of the conditions on the basis of which earlier representation of the petitioners is rejected by the State Government is the resolution dated 8-12-1999. However, the said resolution came to be interpreted by this Court (Coram: P.B.Majmudar, J.) in SCA No.2506/2001 and ultimately it has been held by this Court that since the resolution came to be passed in the year 1999, there is no reason to deprive right of lien to the employees who were in service prior to the resolution and, therefore, it has been submitted by the petitioners that in view of the decision dated 12-7-2001 (in SCA No.2506/2001), in any case, the decision of the Secretary cannot be sustained and the matter is required to be reconsidered.

7. On behalf of the respondent State authorities, Mr.Dabhi, learned AGP has submitted that the decision is taken by the Secretary of the State Government. However, there is no objection if the matter is directed to be reconsidered in light of the judgement dated 12-7-2001 passed by this Court (Coram: P.B.Majmudar, J.) in SCA No.2506/2001.

8. At this stage, the learned Counsel for the petitioners also submitted that as a matter of fact, when this Court (Coram:H.K.Rathod, J.) passed order dated 26-12-2000 in SCA No.13201 of 2000 and allied matters, certain observations were made by the Court, inter alia, that the juniors have been granted right of lien, whereas the petitioners' right of lien is not accepted, which is required to be accepted and the said observations of the Court are not taken into consideration by the State Government while passing the order dated 18-4-2001 and, therefore, it has been submitted that when the matter is ordered to be reconsidered, the Secretary of the State Government may also take into consideration the observations made by this Court (Coram: H.K.Rathod, J.) in SCA No.13201/2000 and allied matters.

9. In view of the aforesaid, it appears that the interpretation given by the State Government in its decision dated 18-4-2001 pursuant to the resolution dated 8-12-1999 is not in conformity with the decision taken by this Court (Coram:P.B.Majmudar, J.) in SCA No.2506/2001 dated 12-7-2001 and in any case when the said resolution is interpreted by this Court exercising power under

Article 226 of the Constitution of India, it would be necessary for the State Government to reconsider the matter and the order dated 18-4-2001 deserves to be quashed on the ground that the same is without considering the important aspect and more particularly on the ground that true and correct interpretation of the resolution dated 8-12-1999 is not considered by the State Government while passing the order dated 18-4-2001.

10. In view of the aforesaid discussion, I find that the order dated 18-4-2001 passed by the Additional Secretary, Education Department of the State Government deserves to be quashed and set aside and following directions will meet with the ends of justice:

10.1 The petitioners shall file a detailed representation pointing out their grievances and they shall also produce copies of the above referred orders passed by this Court (Coram H.K.Rathod, J. and Coram: P.B.Majmudar, J.). Such representation together with the judgements shall be filed within a period of 15 days from today.

10.2 The Secretary, Education Department of the State Government shall consider the matter afresh in light of the above referred earlier judgement of this Court (Coram: H.K.RAthod, J.) and also the subsequent judgement of this Court (Coram: P.B.Majmudar, J.) and shall render the decision within a period of three months from the date of receipt of the order of this Court.

10.3 The Secretary, while passing the order, shall take into consideration all the details which are produced by the petitioners and by the concerned Ashram Shala where the petitioners are working. The decision shall also be communicated to the petitioners by Registered A.D. post.

11. Both these petitions are allowed to the aforesaid extent. Rule made absolute to the aforesaid extent. No cost. Direct service is permitted.

1-2-2003 (Jayant Patel, J.)

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